

REMARKS

This Response is submitted in response to the non-final Office Action dated April 14, 2005. Claims 1-12, 15-20, 28-35 and 37-49 are pending in this application. In the Office Action, Claims 1-5, 7-12, 15-18, 20, 28-30, 32-35 and 37-39 are rejected under 35 U.S.C. §102 and Claims 6, 19, 31 and 40-49 are rejected under 35 U.S.C. §103. In response, Applicants have amended Claims 12, 28 and 34. These amendments do not add new matter. In view of the amendments and response set forth below, Applicants respectfully submit that the Patent Office should withdraw these rejections.

In the Office Action, Claims 1-5, 7-12, 15-18, 20, 28-30, 32-35 and 37-39 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,380,530 to Hill ("*Hill*"). Applicants respectfully disagree with and traverse these rejections for at least the reasons set forth below.

Applicants have amended independent Claims 12, 28 and 34 to include, in part, a metal salt that is designed to provide breath freshening characteristics. The amendments as discussed above are fully supported in the specification, for example, on page 2, lines 19-22. Applicants respectfully submit that *Hill* fails to disclose or suggest every element of the present claims.

The instant claims are directed, in part, to a coated chewing gum center, wherein coating and gum center, or gum base, both include a metal salt designed to provide breath freshening characteristics. *Hill* fails to disclose or suggest the use of a metal salt contained in both the gum center and the coating. Rather, *Hill* discloses use of certain zinc compounds in the coating only. Moreover, *Hill* actually teaches away from the use of active ingredients, such as metal salts, in the gum center/gum base. See, *Hill*, column 8, lines 63-68 and column 9, lines 1-16. See, *Hill*, column 15, lines 12-30.

Furthermore, though *Hill* does disclose the use of zinc compounds in a chewing gum coating, *Hill* fails to address the use of metal salts in providing breath freshening characteristics. Rather, *Hill* directs its invention, including the use of zinc compounds, to plaque disruption, gingivitis control, hypersensitivity treatment, stomatitis treatment (canker sores) and microbes. See, *Hill*, column 9, lines 19-24, and column 23, lines 54-59. Applicants' describe that metal salts bind to volatile sulfur compounds in the mouth that are associated with bad breath. See, specification, page 1, lines 29-31. *Hill* fails to disclose or even suggest this teaching and consequently fails to disclose the use of metal salts in providing breath freshening characteristics.

For the reasons discussed above, Applicants respectfully submit that Claims 1-5, 7-12, 15-18, 20, 28-30, 32-35 and 37-39 are novel, nonobvious and distinguishable from the cited reference. Accordingly, Applicants respectfully request that the rejections of Claims 1-5, 7-12, 15-18, 20, 28-30, 32-35 and 37-39 under 35 U.S.C. §102(b) be withdrawn.

In the Office Action, Claims 6, 19, 31 and 40-49 are rejected under 35 U.S.C. §103(a) as unpatentable over *Hill* in view of U.S. Patent No. 6,030,605 to D'Amelia et al. ("*D'Amelia*"). Applicant respectfully submits that the patentability of Claims 1, 12 and 28 renders moot the obviousness rejection of Claims 6, 19, 31, respectively. In this regard, the cited art fails to teach or suggest the elements of Claims 6, 19, 31 in combination with the novel elements of Claims 1, 12 and 28.

In addition, Appellants respectfully submit that one skilled in the art would not be motivated to modify or combine them to arrive at the present claims. In addition, references must be considered as a whole and those portions teaching against or away from the claimed invention must be considered. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve Inc.*, 796 F.2d 443 (Fed. Cir. 1986). "A prior art reference may be considered to teach away when a person of ordinary skill, upon reading the reference would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the Applicant." *Monarch Knitting Machinery Corp. v. Fukuhara Industrial Trading Co., Ltd.*, 139 F.3d 1009 (Fed. Cir. 1998), quoting, *In re Gurley*, 27 F.3d 551 (Fed. Cir. 1994).

For example, *D'Amelia* directs its invention to use of copper salts in the gum center only, evidenced by the use of slab/stick gums or bubble gums as carriers. See, *D'Amelia*, column 4, lines 4-17. Though *D'Amelia* does disclose use of salts in coated carriers, it only does so in reference to lozenges or tablets, both of which are solid oral carriers. See, *D'Amelia*, column 5, lines 16-43. Furthermore, *D'Amelia* distinguishes between solid oral carriers and chewing gums as carriers. See, *D'Amelia*, column 4, lines 4-7. On the other hand, *Hill* directs its invention to use of salts in the gum coating only. *Hill* also teaches away from use of salts in the gum center/gum base, teaching the "major problem" of releasing active ingredients from the gum base. See, *Hill*, column 8, lines 63-68. Consequently, the Patent Office has ignored the portions of the cited references teaching away from the combination while improperly selectively piecing

together teachings of each of the references in an attempt to recreate what the present claims disclose.

Regarding Claim 40 and Claims 41-49 that depend from Claim 40, Applicants respectfully submit that, besides not being combinable for reasons just discussed, the cited references fail to disclose all the elements of the present claims. For example, *Hill* fails to disclose or suggest the use of copper salts in a chewing gum coating. Though it discusses some zinc compounds, *Hill* makes no mention of the use of copper salts. The Patent Office argues that *D'Amelia* bridges this gap by disclosing zinc alongside copper for use in providing fresh breath characteristics. *D'Amelia*, however, also fails to disclose the use of a copper salt in the coating of a chewing gum. *D'Amelia* discloses the use of copper salts in the gum center only because the reference uses slab/stick gums or bubble gums as the delivery device while making no mention of coated chewing gums. See, *D'Amelia*, column 4, lines 4-17.

For the reasons discussed above, the combination of *Hall* in view of *D'Amelia* does not teach, suggest, or even disclose the present claims, and thus, fails to render the claimed subject matter obvious for at least these reasons. Accordingly, Applicants respectfully request that the obviousness rejections of Claims 6, 19, 31 and 40-49 under 35 U.S.C. §103 be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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